

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2255 & 2256 OF 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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ANAND ANAJ VEPARI MAHAJAN

Versus

ANAND AGRICULTURAL PRODUCE MARKET COMMITTEE

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Appearance:

Mr. V.B. Patel, Sr. Counsel with Mr. K.M. Patel, for the petitioners.

Mr. M.R. Anand, G.P. with Miss Harsha Devni, for the respondents.

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 26/02/96

ORAL JUDGEMENT

Both these Special Civil Applications have been filed by the Traders challenging the action of the respondents

compelling the petitioners to pay the market fee on sale and purchase of rice not covered by the Notification and the relevant entry in the Schedule appended to the Act.

2. This aspect has been considered by me on 26-2-1996 in the Group of Special Civil Applications No.3135 of 1994 etc. in which I found that there is no illegality in the Circular of the State Government dated 12-1-1994. It has been made clear that in the long list containing regulated items in which paddy(husked and unhusked) is shown and the rice is not included therein and as such rice cannot be said to be an agricultural produce.

3. In view of this the grievance of the petitioners does not survive. The another grievance of the petitioners is with respect to levy on paddy brought from other market area for the industrial use. Mr. Patel learned Sr. Counsel for the petitioners does not want to press this part of the grievance in these Special Civil Applications. He, however, seeks liberty to press this point before the Agricultural Market Produce Committee. Mr. Patel is permitted to raise this plea before the Agricultural Market Produce Committee. The third grievance of the petitioners is with respect to taking of fees by the respondent no.1 on transactions of rice and paddy with effect from 1-10-1991. It is submitted that the Notification under Sections 6(5) of the Gujarat Agricultural Produce Markets Act, 1963 was published in the Government Gazette on 17-10-1991 and as such apparently demand of fee by the respondent on transactions of rice and paddy prior to 17-10-1991 is illegal. The petitioners have taken this contention in para 7 and 13(gg) of the petition. There is no effective reply to the said contention in the counter affidavit filed by the respondent no.1 Anand Agricultural Produce Market Committee. A demand of levy prior to the date of notification is exfacie illegal. A Tax cannot be imposed with retrospective effect. Thus, the contention deserves to be accepted.

O R D E R.

In the result, both these Special Civil Applications are allowed. The respondents are restrained from charging levy on rice, and further demand of levy on paddy prior to 17-10-191 is quashed.

By the interim order dated 8-4-1992 the petitioners were directed to deposit 25% of the fees payable on rice. The respondent no.1 had given the undertaking to refund and pay the said fee to the concern trader with interest accrued thereon if the petitioners success. In view of this, it is directed that the respondent no.1 shall refund 25% of the fee

payable on rice with usual interest. The petitioners' undertaking with respect to remaining 75% of fee on rice is discharged. Rule is made absolute to the above extent. There shall be no order as to cost.

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